

Remarks

The Examiner rejected claim 6 under 35 U.S.C. §112, second paragraph, as being indefinite. The applicants have amended this claim to more particularly point out and distinctly claim the invention.

The Examiner rejected claims 1-8 under 35 U.S.C. §101 arguing that those claims are not "within the technological arts." The Applicants respectfully traverse the Examiner's rejection because the "technological arts" test is not a proper basis upon which to reject claims as non statutory subject matter under 35 U.S.C. §101. *Ex parte* Lundgren, Appeal No. 2003-2088, p. 9 (BPAI 2005):

Our determination is that there is currently no judicially recognized separate "technological arts" test to determine patent eligible subject matter under § 101. We decline to create one. Therefore, it is apparent that the examiner's rejection can not be sustained.

The appropriate test for patentable subject matter under 35 U.S.C. §101 is whether a claim produces a "useful, concrete and tangible result." *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352, 1358, 50 USPQ2d 1447, 1452 (Fed.Cir. 1999). Claim 1 produces three useful, concrete and tangible results: [1] the computation of a company's sources of creditor protection from both traditional sources, and alternative sources, such as net deferred tax liability in the event of an overall loss; [2] an estimation of the company's potential unexpected worst-case losses for each its exposures with 99.9% confidence, and [3] a comparison between the company's creditor protection and the company's potential unexpected worst-case losses. Dependent claims 2-7 produce additional useful, concrete and tangible results. Accordingly, claims 1-8 pass muster under 35 U.S.C. §101.

The Examiner also rejected claims 1-8 as being unpatentable over King (U.S. 5,704,045) in view of Munoz (U.S. 2002/0198822) and Rebane (U.S. 6,078,904). As to claim

1, the Examiner found cites King at col. 3, lines 20-47 and/or col. 13 lines 15-43 as teaching or suggesting “net deferred tax liability in the event of an overall loss” as a “company’s source of creditor protection.”

King does not teach this aspect of the claimed invention. King makes no reference to using a company’s net deferred tax liability as an alternative source of creditor protection, as recited in claim 1. King finds creditor protection in the form of third-party investors, or reinsurers — not deferred tax liabilities in the event the company suffers a loss. King discloses a system of segregated reserve accounts through which third-party investors receive compensation for accepting risk. (Col. 3, lines 20-31.) The compensation is matched with the equity or debt sourced by the investor, sufficient to pay a total loss on the maximum risk. (Col. 3, lines 20-31.)

While King col. 14, line 49 makes reference to “some tax related or accounting advantage,” the advantage is that of the individual third-party investor in certain jurisdictions — not a deferred tax liability for the indebted company that arises in the event of a loss, as claim 1 recites. The Examiner cites this passage with respect to claim 2, which recites “future tax liability” as another source of creditor protections. Again, the claim recites the deferred future tax liability of the indebted company in the event of a loss, not tax advantages that third-party investors may enjoy in their domicile jurisdictions due to their reinsurance investment in the invention described in King.

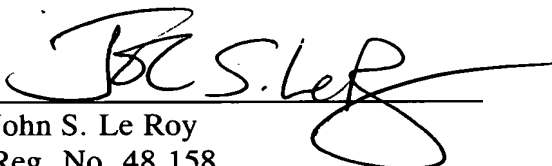
Conclusion

The Applicants have made a genuine effort to examine the prior art in view of the Examiner's rejections. The Applicants believe that the claims constitute patentable subject matter, and are patentably distinct from the references cited. Accordingly, the Applicants respectfully request allowance of the pending claims. The Examiner is invited to contact the undersigned if further discussion will assist in advancing the prosecution of the present application.

No additional fee is believed to be due as the result of the filing of this paper. However, any additional fees or credits should be applied to Deposit Account 06-1510 (Ford Global Technologies, LLC). A duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

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